



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Hedgecock Electric, Inc.

File: B-274776.2

Date: January 31, 1997

Jesse W. Rigby, Esq., Clark, Partington, Hart, Larry, Bond, Stackhouse & Stone, for the protester.

Sandra M. Wozniak, John E. Lariccia, Esq., and Marian E. Sullivan, Esq., Department of the Air Force, for the agency.

Jacqueline Maeder, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Low bid was properly rejected as nonresponsive where its certificate of procurement integrity identified one person as the certifier but a different person signed the certifier's name on the certificate; the manner of execution of the certificate creates doubt about whether one individual representative of the bidder has made an unequivocal commitment to satisfy the substantial legal obligations imposed by the certificate.

DECISION

Hedgecock Electric, Inc. protests the rejection of its bid and the award of a contract to Overstreet Electric Company under invitation for bids (IFB) No. F33601-96-B-9009, issued by the Department of the Air Force for electrical work at Wright-Patterson Air Force Base, Ohio. Hedgecock's bid was rejected because the individual designated as the "certifier" on the certificate of procurement integrity did not personally sign that document.

We deny the protest.

The IFB, issued July 15, 1996, required bidders to submit the standard bid form (SF) 1442 and a bid bond. Additionally, because the contract was expected to exceed \$100,000, the IFB, pursuant to Federal Acquisition Regulation (FAR) § 3.104-10(a), contained the standard certificate of procurement integrity clause found at FAR § 52.203-8. That clause implements section 27(e) of the Office of Federal Procurement Policy (OFPP) Act, 41 U.S.C. § 423(e) (1994), which precludes federal agencies from awarding a contract to a firm unless the officer or employee responsible for preparing the offer or bid certifies in writing that neither he nor those employees who participated in preparing the bid has any information

concerning violations or possible violations of the OFPP Act, and certifies to the veracity of that disclosure.¹ Mid-East Contractors, Inc., 70 Comp. Gen. 383 (1991), 91-1 CPD ¶ 342. The certification requirement obligates the officer or employee responsible for the bid or offer to become familiar with the prohibitions of the OFPP Act, and imposes a requirement to make full disclosure of any possible violations of the OFPP Act. Id. Additionally, the signer of the certificate is required to collect similar certifications from all other individuals involved in the preparation of the bid or offer. 41 U.S.C. § 423(e)(1)(B).

The certification clause incorporated in the IFB stated, in pertinent part, the following:

"CERTIFICATE OF PROCUREMENT INTEGRITY

"(1) I, [Name of certifier] _____, am the officer or employee responsible for the preparation of this offer and hereby certify that, to the best of my knowledge and belief, . . . I have no information concerning a violation of . . . the [OFPP] Act . . . occurring during the conduct of this procurement

"(2) . . . I further certify that, to the best of my knowledge and belief, each officer, employee, agent, representative, and consultant of [Name of Offeror] _____ who has participated personally and substantially in the preparation or submission of this offer has certified that he or she is familiar with, and will comply with, the requirements of . . . [the OFPP] Act . . . , and will report immediately to me any information concerning a violation or possible violation of . . . [the OFPP] Act . . . pertaining to this procurement.

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"(4) I agree that, if awarded a contract under this solicitation, the certification required by . . . the Act shall be maintained in accordance with paragraph (f) of this provision.

¹The Federal Acquisition Reform Act of 1996 eliminated the procurement integrity certification requirements contained in section 27(e) of the OFPP Act, 41 U.S.C. § 423(e). Pub. L. No. 104-106, § 4304, 110 Stat. 642, 659-665 (1996). However, the solicitation at issue here was issued prior to the effective implementation date of the amended provision. Pub. L. No. 104-106, § 4401, 110 Stat. 678.

[Signature of the officer or employee responsible for the offer and date]

[Typed name of officer or employee responsible for the offer]

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"THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES AND THE MAKING OF A FALSE, FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER TITLE 18, UNITED STATES CODE,SECTION 1001."

Of the nine bids received by the August 22 bid opening, Hedgecock's bid of \$546,000 was low, and Overstreet's bid was second low at \$549,183. Hedgecock's bid contained the signature of Ronald W. Hedgecock, who represents that he is the president of the firm. The signature of Ronald W. Hedgecock was also included on the certificate of procurement integrity in Hedgecock's bid, which listed Ronald W. Hedgecock as the "certifier" and the "offeror or employee responsible for the offer," and on the bid form which also represented Hedgecock, as the president, as the "person authorized to sign [the] offer."

Overstreet protested to the agency on September 20 and to our Office by letter dated September 26, alleging that the signatures on Hedgecock's bid, bid bond, and certificate of procurement integrity were not the same. Overstreet noted that it was apparent from a comparison of the signatures that the signatures differed and alleged that Hedgecock's foreman at Wright-Patterson, Richard Wade, had actually executed the bid form (SF 1442) and the certificate of procurement integrity using the president's name, and that Ronald W. Hedgecock had personally signed only the bid bond. Overstreet submitted three affidavits from former Hedgecock employees stating that the signatures on the bid form and on the certificate of procurement integrity were not that of Ronald W. Hedgecock. Overstreet also submitted examples of Hedgecock's signature from company correspondence.

In response to the protests, the Air Force asked Hedgecock to authenticate its bid. Hedgecock's president, Ronald W. Hedgecock, responded by stating that the firm's bid form and certificate of procurement integrity were not executed by him personally but by Richard Wade, the firm's general superintendent at Wright-Patterson, in Mr. Hedgecock's name. Specifically, the firm's bid documents were sent to Richard Wade at Wright-Patterson so that Mr. Wade could hand-deliver the bid package to the scheduled bid opening. However, several pages were

inadvertently omitted. When the omission was discovered, the missing pages were faxed to Mr. Wade. Mr. Hedgecock verbally authorized Mr. Wade to sign the president's name where required on the documents. Thus, while Ronald W. Hedgecock personally signed the bid bond, Richard Wade signed the president's name on both the certificate of procurement integrity and the SF 1442.

Because Hedgecock's president, Ronald W. Hedgecock, did not personally execute the procurement integrity certificate, the agency determined that Hedgecock's bid was nonresponsive and sustained Overstreet's agency-level protest.² The agency awarded the contract to Overstreet and Hedgecock's protest followed.

Hedgecock argues that the signature on the procurement integrity certificate is the "personal" signature of Mr. Hedgecock, "affixed to the document at his direction for the purpose of expressly and personally making the certifications required and with the specific intent to firmly and irrevocable bind Hedgecock Electric, Inc. to the bid." The protester argues that Mr. Ronald W. Hedgecock was bound by the certification because he authorized Mr. Wade to sign on his behalf and that Mr. Wade acted only as Mr. Hedgecock's "scribe," the "extension of Mr. Hedgecock's will, intention and hand"

In our view, the agency properly rejected Hedgecock's bid because its president, who the bid identifies as the individual responsible for the bid, did not personally execute the procurement integrity certificate included in its bid.

As a result of the substantial legal obligations imposed by the certification requirement of the OFPP Act, implemented by the certificate of procurement integrity clause, and given the express requirement for the certificate to be separately signed, a bid with an improperly executed certificate of procurement integrity renders the bid nonresponsive. Mid-East Contractors, Inc., supra; Sweepster Jenkins Equip. Co., Inc., B-250480, Feb. 8, 1993, 93-1 CPD ¶ 111. Specifically, where the manner of execution of the certificate creates doubt about whether an individual representative of the bidder has made an unequivocal commitment to satisfy the substantial legal obligations imposed by the OFPP Act, the bid is nonresponsive. North Central Constr., Inc., B-256839, July 5, 1994, 94-2 CPD ¶ 9.

The reason for this rule is that the procurement integrity certification imposes on one named individual representative of the bidder--the officer or employee of the contractor responsible for the bid or offer--a direct obligation to become familiar with the OFPP Act's prohibition against certain conduct. This certificate imposes, on the bidder and its representative, a requirement to make full disclosure of any

²As a result, our Office dismissed Overstreet's protest on October 10, 1996.

possible violations of the OFPP Act and to certify to the veracity of that disclosure. The certifying individual also attests that every officer, employee, agent, representative, or consultant of the contractor involved in preparation of the bid or offer is familiar with the requirements of the OFPP Act, and has filed a certification indicating no knowledge of any possible violation. In addition, the certifying individual must represent that all individuals involved in the preparation of the bid or offer will report any information concerning a possible violation of the OFPP Act to the officer or employee signing the certification. The certification provisions also prescribe specific contract remedies for a false certification, including withholding of profits from payments and terminating errant contractors for default. These provisions are materially different from those to which the bidders otherwise are bound. Mid-East Contractors, Inc., supra; Aerospace Design, Inc., B-259350, Mar. 23, 1995, 95-1 CPD ¶ 161.

We have recognized that an agent of a bidder may execute the certificate in his or her own name so long as he or she is the "officer or employee responsible for the offer" and has the actual authority to bind the bidder to the legal obligations contained in the certificate at the time the bid is submitted. See Sweepster Jenkins Equip. Co., Inc., supra. However, where the certifier is listed on the certificate as an individual different from the agent who actually signs the certificate, the bid is nonresponsive because the manner of execution of the certificate creates doubt about whether an individual representative of the bidder has made an unequivocal commitment to satisfy the substantial legal obligations imposed by the OFPP Act. Aerospace Design, Inc., supra; North Central Constr., Inc., supra.

While Richard Wade may have been authorized to sign Hedgecock's procurement integrity certificate as an agent of Ronald W. Hedgecock and to bind the firm to the terms of the certificate, he was not listed on the certificate as the certifier. Where an agent signs for the named certifier in the certificate of procurement integrity, we have found that the identity and commitment of the individual who will be the focus of the OFPP Act's obligation is unclear, such that the failure of the named certifier to personally execute the certificate by properly signing it renders the bid nonresponsive. Metro Monitoring Servs., Inc., B-274236, Nov. 27, 1996, 96-2 CPD ¶ 204; Aerospace Design, Inc., supra. This is so because the OFPP Act, through its implementing regulations, contemplates the execution of the certificate personally by the certifier by requiring the named officer or employee of the contractor responsible for the bid ("I") to certify "to the best of my knowledge and belief" that he or she has no information concerning violations or possible violations, and that individuals who have participated in the preparation of the offer have certified that they are familiar with and will comply with the Act and will report immediately to the certifier any information concerning violations or possible violations. Moreover,

the making of a false certification could render the certifier subject to criminal prosecution. Thus, in our view, the execution of the certificate is an act required to be performed personally by the certifier and not through an agent of the certifier. Metro Monitoring Servs., Inc., supra.

Since, contrary to the protester's position, Ronald W. Hedgecock, the purported certifier, did not personally execute the certificate, we cannot say that he certified "to the best of [his] knowledge and belief" that he had no information of violations or possible violations, and that individuals who have participated in the preparation of the offer have certified that they are familiar with and will comply with the Act and will report information concerning violations to Mr. Hedgecock, as required by the certificate. Further, Mr. Hedgecock's failure to personally execute the certificate creates doubt about whether any individual representative of the bidder has made an unequivocal commitment to satisfy the legal obligations imposed by the OFPP Act and whether a false certification could render the certifier subject to criminal prosecution.

In sum, the manner in which Hedgecock executed its bid puts into question whether the purported signer of the certificate is legally subject to the material obligations imposed by the certificate and to the penalties that the law provides for violation of the terms of the certificate. Accordingly, Hedgecock's bid was properly rejected as nonresponsive. Metro Monitoring Servs., Inc., supra.

The protest is denied.

Comptroller General
of the United States